

## **SPECIAL SANITARY SEWER OFF-SITE FACILITIES AGREEMENT**

### **M/I Homes The Heritage Off-Site Sewer**

Whitestown, Indiana

This Special Sanitary Sewer Off-Site Facilities Agreement ("Agreement"), made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019, is between WHITESTOWN MUNICIPAL UTILITIES ("Whitestown") and M/I HOMES OF INDIANA, LP ("Developer"), and is regarding the construction and extension of off-site sanitary sewer facilities in conjunction with a proposed residential development, to be known as The Heritage, that is generally located southeast of the corner of Main Street and Albert S. White Parkway in Whitestown, Indiana.

### **RECITALS:**

A. The Developer owns or has a contract to purchase an approximately 95 acre development legally described and depicted in Exhibit A attached hereto and incorporated herein (the "Development").

B. The Developer anticipates selling or developing lots within the Development which in turn will seek to connect to Whitestown's sewer utility system ("Users").

C. The Developer desires to construct, at its expense, an off-site sewer lift station and main extensions and related facilities for service to the Development so that Whitestown can provide sewer service to the Development.

D. Whitestown will reimburse the Developer for a portion of the off-site sewer main being constructed by the Developer at Whitestown's request and in addition to the facilities that will serve the Development.

E. Once the Developer completes the extensions, Whitestown anticipates that it will be able to provide adequate capacity in Whitestown's sewer system to serve the Development as capacity is requested.

F. The parties desire to enter into an agreement that establishes the terms and conditions for the construction and extension of sewer facilities for service to the Development.

NOW, THEREFORE, in consideration of the mutual agreement and covenants set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties agree as follows:

## **ARTICLE I**

### **RIGHTS AND RESPONSIBILITIES OF WHITESTOWN**

Section 1.1. Specifications for Sewage Facilities. Prior to the beginning of construction of the sewer facilities, Whitestown will provide the Developer with: (i) the locations, at Whitestown's sole discretion, for the sewer facilities' connection to Whitestown's existing sewer facilities, which connections are shown on the Approved Plans (as defined herein); and (ii) a copy of Whitestown's construction specifications for the sewer facilities to be constructed under this Agreement (collectively, the "Utility Facilities").

Section 1.2. Approval of Plans for and Construction of Utility Facilities. Whitestown has approved the plans for the Utility Facilities for Heritage Section 1 prepared by V3 Consultants with a revision date of March 20, 2019 (the "Approved Plans"). Any changes to the Approved Plans require review and approval by Whitestown in its discretion.

Section 1.3. Compliance with Whitestown's Specifications. Whitestown shall have the authority during all phases of construction and inspection of the Utility Facilities to enter upon the Development or other applicable property to inspect the Utility Facilities (with or without notice) and notify the Developer of any failure of materials or workmanship to meet Whitestown's specifications and halt construction if Whitestown's specifications are not being met. Whitestown, in its sole discretion, may also direct the Developer to submit change orders to the contractor to cure any defects in material or workmanship revealed by Whitestown's inspection. Whitestown shall not be obligated to permit connection to its facilities or accept dedication of the Utility Facilities until the Utility Facilities are completed and any defects cured in accordance with Whitestown's construction specifications.

Section 1.4. Provision of Service. This Agreement shall not be construed to require Whitestown to provide service to the Developer and/or any particular User at any particular time. The parties contemplate that Whitestown will allocate capacity and provide service to future customers in the Development on an individual basis following, in part, execution of an applicable water and/or sewer service agreement for the Developer or particular User, connection and payment of all applicable fees, and compliance with all applicable agreements, laws, ordinances, and rules and regulations, and utility related directives of Whitestown. Notwithstanding any provision to the contrary, neither this Agreement nor any term herein shall be construed as a guarantee of capacity or allocation of capacity by Whitestown. Whitestown shall have the right to terminate this Agreement if the Developer fails to complete construction of the Utility Facilities within one (1) year from the date of this Agreement subject to extension for force majeure, delays caused by Whitestown and other causes beyond Developer's reasonable control. Whitestown may further terminate this Agreement and seek all available legal and/or equitable remedies for any material breach of this Agreement not

cured within fifteen (15) days of written notice of breach to the Developer, with such additional time as is necessary to cure such breach so long as Developer diligently proceeds with such cure.

Section 1.5. Rates and Charges. Whitestown will impose all of Whitestown's prevailing rates and charges, including, but not limited to, the following:

- a. Capacity fees;
- b. Tap fees;
- c. Monthly user rates;
- d. Private hydrant fees, as applicable;
- e. Inspection and plan review fees;
- f. Subsequent connector fee(s), as applicable; and
- g. Any other fees that are subsequently enacted by ordinance.

Section 1.6. Maintenance of Utility Facilities. Whitestown will not be responsible for any portion or cost of the design, construction, or installation of any Utility Facilities, except for reimbursements to the Developer as specifically set forth in Section 2.2 below. Following dedication and acceptance of the Utility Facilities in Whitestown's sole discretion, Whitestown will maintain and operate the Utility Facilities (subject to Sections 2.7 and 2.8 below).

Section 1.7. Right to Enter the Development. Whitestown shall have the right to enter into the Development at all reasonable times to inspect, repair and/or replace any equipment used in connection with, or which has an impact on, Whitestown's sewer or water service. However, Whitestown does not, in any way, have or assume any obligation to maintain any facilities not owned by Whitestown.

Section 1.8. Whitestown's Liability. Absent gross negligence or intentional misconduct, Whitestown will not be liable for any damage resulting from Whitestown's sewer and/or water service in and around the Development, including, without limitation, damage caused by events of force majeure. For purposes of this Agreement, an event of force majeure means a strike, vandalism, power failure, pipe failure or breakage, lockout, labor dispute, embargo, flood, earthquake, storm, dust storm, lightning, fire, epidemic, act of God or nature, war, national emergency, civil disturbance, riot, act of sabotage or terrorism, restraint by court order or order of another governmental authority, or any other unexpected or uncontrollable events. Whitestown shall further not be liable for any indirect, special, incidental, or consequential damages.

Section 1.9. Recovery of Attorney Fees. Whitestown is entitled to recover its costs including, but not limited to, reasonable attorneys' fees and court costs in any action brought to enforce the terms of this Agreement.

## **ARTICLE II**

### **RIGHTS AND RESPONSIBILITIES OF DEVELOPER**

Section 2.1. Cost of Installation and Facilities. The Developer shall be responsible for paying the cost of and installing the Utility Facilities and any and all other facilities in and around the Development that are necessary for the provision of sanitary sewer and/or water service to the Development, with Whitestown's only reimbursement obligation specifically set forth in Section 2.2 below. The Utility Facilities are generally anticipated to include the facilities set forth in Exhibit B attached hereto and incorporated herein (which construction by the Developer will also include the "Town of Whitestown Portion" set forth therein). The Developer and/or any future owner/tenant shall further take any other measures Whitestown determines to be necessary to prevent excess strength effluent from entering into Whitestown's wastewater collection system.

Section 2.2. Whitestown Reimbursement. Within 30 days following completion of construction of the Utility Facilities and acceptance of such Utility Facilities by Whitestown, Whitestown will reimburse the Developer for the Developer's actual verified cost of the "Town of Whitestown Portion" of the off-site sanitary sewer unit costs from SMH 2 to SMH 9, as set forth in Exhibit B (the "Town Reimbursement"). Whitestown and Developer shall work in good faith regarding the dedication and acceptance of the Utility Facilities and the timing payment of the Town Reimbursement. The Town Reimbursement shall not exceed the amount of the Town of Whitestown Portion listed in Exhibit B without written consent of the Whitestown Utility Superintendent prior to the Developer incurring any such additional costs.

Section 2.3. Payment of Rates and Charges. The Developer and/or any User or future owner/tenant shall be responsible for timely payment of Whitestown's prevailing rates, charges, and fees for monthly sewer and water service. All capacity is subject to Whitestown's approval and allocation. It is understood that, in the event Whitestown allocates capacity to the Developer or any User hereafter, or any User desires to connect structures to the Utility Facilities or Whitestown's other facilities, service will not commence or continue unless and until the Developer and/or User has entered into applicable agreement(s) for such service and paid the appropriate and then applicable tap charge, capacity fee, subsequent connector fees, and other applicable rates and charges, to the extent not previously paid by Developer (See also Section 1.4).

Section 2.4. Plans, Specifications, and Construction of Utility Facilities. Whitestown and/or its engineer have approved the Approved Plans and the Developer

shall install the Utility Facilities in accordance with the Approved Plans. The Developer shall pay Whitestown's cost of reviewing the Developer's plans for the Utility Facilities, inspecting the installation of the Utility Facilities, and performing the testing (as required in Section 2.5 below). The Developer will also be responsible for obtaining all deeds, easements, permits, approvals, and consents required for the construction of the Utility Facilities.

Section 2.5. Sampling and Flow Measuring Manholes. In and as shown on the Approved Plans, the Developer will install sampling and flow measuring manholes at locations that are easily accessible by Whitestown. Whitestown shall have access to the manholes to sample and measure the flow and usage of the Development.

Section 2.6. Testing and As-Built Drawings. Prior to backfilling Whitestown, or the Developer at Whitestown's direction, will test the Utility Facilities as required by Whitestown's construction standards and remedy any deficiencies as required by Whitestown or its engineer. Upon completion of the testing (and remediation of all deficiencies), the Developer will provide Whitestown with three (3) sets of as built drawings and a copy of the electronic CAD files at a scale of 1" = 100' showing the location of any Utility Facilities, including the taps.

Section 2.7. Dedication of Utility Facilities and Easements. The Developer agrees to dedicate the Utility Facilities, exclusive of any service laterals, to Whitestown after final inspection by Whitestown, interconnection of the Utility Facilities to Whitestown's facilities, and acceptance of the same in Whitestown's sole discretion. The dedication of the Utility Facilities shall occur by the execution of a Bill of Sale and Easement Dedication, the form of which is attached hereto as Exhibit C. The Developer shall also provide adequate and necessary deeds or easements for all Utility Facilities that are acceptable to Whitestown, and shall record all necessary documents in the Boone County Recorder's Office in Whitestown's name. The easements shall be substantially in the form attached hereto as Exhibit D, and the Developer shall provide Whitestown with copies of the final proposed easements for review and approval or rejection prior to initiating construction or recording the easements. The Developer shall ensure that all Utility Facilities are located within the easements provided to Whitestown (and not within the right-of-way, except for road crossings) and shall be responsible for indemnifying Whitestown and paying all costs associated with relocating Utility Facilities and/or easements in the event the Utility Facilities are not located within the easements.

In the event the Developer cannot acquire the requisite easements at a reasonable cost, Whitestown, through attorneys and consultants retained at Whitestown's sole discretion, will assist the Developer in acquiring the easements necessary or appropriate for the Utility Facilities, and the Developer shall pay all of Whitestown's costs associated with any assistance provided or condemnation action initiated, including the Whitestown's attorneys' fees, acquisition costs, court costs, and any damages awarded by the court.

The Developer shall convey the adequate land on which any lift station or similar improvement is located, including such lift station or improvement (collectively, the "Property") to Whitestown by Warranty Deed free of any liens or encumbrances. If the Property is not accessible from a right-of-way, Developer shall provide or obtain all necessary easements to allow Whitestown to access the Property. If in Whitestown's sole discretion, conveyance of the Property by Deed may be made instead by an easement providing Whitestown with sole and exclusive access to the Property, using a form of Easement provided by Whitestown for such purpose.

Section 2.8. Bond for Utility Facilities. Prior to dedication of the Utility Facilities, the Developer must provide a three (3) year material and labor warranty in an amount equal to twenty percent (20%) of the total cost of the Utility Facilities with a surety and terms that are acceptable to Whitestown. To the extent any repairs are not covered by the surety, the Developer shall be responsible for any expense of repair, replacement and/or maintenance that occurs either prior to acceptance of the Utility Facilities by Whitestown or within the three (3) year warranty period.

Section 2.9. Release and Waiver as to Town's Rates and Charges. The Developer hereby releases any right it may have to refuse or remonstrate against future customers and waives any opposition to Whitestown's current rates, charges, or fees.

Section 2.10. Indemnification of Town. Prior to beginning construction of the Utility Facilities, the Developer must provide Whitestown with certification that Whitestown is an additional named insured on a policy insuring Whitestown against any and all claims for personal injury or property damage resulting from construction of the Utility Facilities. The Developer shall further defend and hold harmless Whitestown against any and all such claims and indemnify Whitestown for all reasonable costs, including but not limited to attorneys' fees, incurred by Whitestown as a result of any and all such claims.

Section 2.11. Use of Whitestown's System. The Developer agrees to obtain sanitary sewer and water service only from Whitestown; however, the Developer will refrain from discharging or using Whitestown's systems in any way which inhibits Whitestown from providing service or causes damage to Whitestown's facilities. In using Whitestown's system, the Developer agrees to abide by Whitestown's current Sewer or Water Use Policies or as the same may be revised. The Developer is prohibited from working on or altering Whitestown's facilities and the Developer will not permit or allow the unauthorized connection or extension of Utility Facilities or any part of Whitestown's system.

Section 2.12. Additional Easements. The Developer (and his successors and assigns) agrees to provide additional water and/or sanitary sewer easements (in, over and across the Development) without additional compensation, in a form acceptable to Whitestown, to facilitate the provision of sewer and water service to future users in and

around the Development. The exact location of the easements will be determined at a future date by the parties so as to minimally impact the reasonable use and/or anticipated development of the Development.

Section 2.13. Waiver of Annexation. In exchange for the benefits bestowed upon the Development by the provisions hereunder, the Developer hereby releases and waives all rights to remonstrate against any annexation(s) by Whitestown.

### **ARTICLE III** **MISCELLANEOUS**

Section 3.1. Legal Description for Development. The legal description attached hereto as Exhibit A and incorporated herein by reference is a true and accurate legal description of the Development.

Section 3.2. Binding on Successors and Assigns. The parties agree that Whitestown's service touches and concerns the land and this Agreement shall be binding upon and inure to the benefit of the parties hereto, as well as their successors and assigns.

Section 3.3. This Agreement sets forth the entire agreement between the parties hereto, and fully supersedes any prior agreements or understandings between the parties pertaining to the subject matter hereof.

Section 3.4. Amendment and Waiver. Neither this Agreement, nor any term hereof, may be changed, modified, altered, waived, discharged, or terminated, except by written instrument. Failure to insist upon strict adherence to any term of this Agreement shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

Section 3.5. Counterparts. This Agreement may be executed in counterparts, including facsimile or photocopy counterparts, each of which shall be deemed an original, but all of which taken together shall constitute a single document.

Section 3.6. Recordation. Whitestown may record this Agreement at Whitestown's cost.

Section 3.7. Authority of Parties. Each party and signatory hereto has the authority to enter into this Agreement and at all times has full authority to perform this Agreement. No further approval or consent by any other person or authority is required.

Section 3.8. Captions. The captions to this Agreement are for convenience of reference only and shall not be given any effect in the interpretation of this Agreement.

Section 3.9. Notices. All notices, consents and other communications (collectively, "Notices") shall be given to Whitestown or the Developer in writing to the addresses set forth below:

Whitestown:	Whitestown Municipal Utilities Whitestown Municipal Complex 6210 Veterans Dr. Whitestown, IN 46075 Attn: Utility Manager
With Copy To:	Bose McKinney & Evans LLP 111 Monument Circle, Ste. 2700 Indianapolis, IN 46204 Attn: Stephen C. Unger
Developer:	M/I HOMES OF INDIANA, LP 8425 Woodfield Crossing Blvd., Suite 100W Indianapolis, IN 46240 Attn: Matt Howard <a href="mailto:mhoward@mihomes.com">mhoward@mihomes.com</a>

Either party may change its address for Notices by giving written notice to the other party in accordance with this provision.

Section 3.10. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining terms hereof will not be affected, and in lieu of each provision that is found to be illegal, invalid or unenforceable, a provision will be added as part of this Agreement that is as similar to the illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

Section 3.11. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Indiana.

**[The remainder of this page intentionally left blank]**



WHITESTOWN MUNICIPAL UTILITIES

\_\_\_\_\_  
Danny Powers, Manager

STATE OF INDIANA                    )  
  )SS:  
COUNTY OF BOONE                 )

Before me, a Notary Public in and for said County and State, personally appeared Danny Powers, by me known to be the Manager of Whitestown Municipal Utilities, who acknowledged the execution of the foregoing "Special Sanitary Sewer Off-Site Facilities Agreement" on behalf of said entity.

WITNESS my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
(Printed Signature)

My Commission Expires:

\_\_\_\_\_

My County of Residence:

\_\_\_\_\_

M/I HOMES OF INDIANA, LP

By: 


Printed: MAT HOWARD

Its: LAND DEVELOPMENT MANAGER

STATE OF INDIANA )  
 )SS:  
COUNTY OF Marion )

Before me, a Notary Public in and for said County and State, personally appeared Matt Howard, by me known to be the Land Development Manager of M/I Homes of Indiana, LP, who acknowledged the execution of the foregoing "Special Sanitary Sewer Off-Site Facilities Agreement" on behalf of said entity.

WITNESS my hand and Notarial Seal this 8<sup>th</sup> day of May, 2019.

  
Notary Public

David Funkhouser  
(Printed Signature)

My Commission Expires:  
4/19/23

My County of Residence:  
Hamilton



This instrument prepared by Stephen C. Unger, Attorney at Law, Bose McKinney & Evans LLP, 111 Monument Circle, Suite 2700, Indianapolis, Indiana 46204.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each and every Social Security number in this document, unless it is required by law.  
Stephen C. Unger

**Exhibit A**  
Development

**Exhibit B**  
Off-site Sewer Costs



Indianapolis Division  
8425 Woodfield Crossing Blvd, Suite 100W  
Indianapolis, IN 46240  
317.255.9900 OFFICE  
317.536.3820 FAX

**The Heritage Offsite Sewer Costs**

OFFSITE SANITARY SEWER UNIT COSTS SMH 2 to SMH 9				
THE HERITAGE SECTION 1				
Depth	Quantity	Unit	Unit Cost	Total Cost
24" PVC - 16'-20'	1477	LF	\$ 129.37	\$ 191,079.49
24" PVC - 20'-25'	380	LF	\$ 153.22	\$ 58,223.60
Manholes 16'-20'	5	EA	\$ 5,003.00	\$ 25,015.00
Manholes 20'-25'	3	EA	\$ 6,215.00	\$ 18,645.00
Granular Backfill	1807	TON	\$ 24.85	\$ 44,903.95
Lateral to farm house	73	LF	\$ 164.00	\$ 11,972.00
Maintenance Bond	1	LS	\$ 2,039.00	\$ 2,039.00
<b>Total Offsite</b>				<b>\$ 351,878.04</b>
<b>M/I Agreed Upon Portion</b>				<b>\$ 29,600.00</b>
<b>Town of Whitestown Portion</b>				<b>\$ 322,278.04</b>

LIFT STATION AND FORCE MAIN COSTS TO SMH 2				
Depth	Quantity	Unit	Unit Cost	Total Cost
24" Ductile Iron	10	LF	\$ 335.00	\$ 3,350.00
24" PVC 20'-25'	214	LF	\$ 153.20	\$ 32,784.80
8" Force Main	383	LF	\$ 40.16	\$ 15,381.28
8" Poly DD Force Main	346	LF	\$ 141.50	\$ 48,959.00
Force Main Tie - In to Existing Manhole	1	LS	\$ 4,336.00	\$ 4,336.00
Coat Interior of Existing Manhole	2	EA	\$ 3,682.00	\$ 7,364.00
Mag Meter	1	EA	\$ 13,136.00	\$ 13,136.00
8" Plug Valve	3	EA	\$ 2,839.00	\$ 8,517.00
24" Slide Gate	1	EA	\$ 15,063.00	\$ 15,063.00
Lift Station	1	LS	\$ 428,173.00	\$ 428,173.00
Lift Station Wood Privacy Fence	1	LS	\$ 15,720.00	\$ 15,720.00
Lift Station Concrete Drive	1	LS	\$ 17,369.00	\$ 17,369.00
<b>Total</b>				<b>\$ 610,153.08</b>

**Exhibit C**  
Form Bill of Sale

Deed Cross-Reference: \_\_\_\_\_

**BILL OF SALE AND EASEMENT DEDICATION**

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THIS BILL OF SALE AND EASEMENT DEDICATION (the "Bill of Sale") is executed and delivered as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ ("Developer") to and in favor of the TOWN OF WHITESTOWN ("Town").

**RECITALS:**

A. Developer is the owner of and/or controls certain real property located in Boone County, Indiana, that is more particularly described on Exhibit 1 attached hereto and incorporated herein by reference (the "Property").

B. Developer and Town entered into a Sanitary Sewer and/or Water Agreement dated \_\_\_\_\_, \_\_\_\_\_ (the "Agreement"), pursuant to which Town agreed to provide sanitary sewer and water service to Developer's proposed development.

C. In order to receive service for the Property, Developer agreed in the Agreement to extend the Town's sewage collection and water distribution facilities ("Utility Facilities") to the Property.

D. As part of the Agreement, Developer also agreed to dedicate the Utility Facilities to the Town upon their completion and satisfactory inspection by the Town.

E. Developer now desires to dedicate and transfer the Utility Facilities to the Town.

NOW, THEREFORE, for Ten and No/100 Dollars (\$10.00) paid Developer by Town and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Developer agrees as follows:

1. Defined Terms. All capitalized terms used but not defined in this Bill of Sale, shall have the meaning ascribed in the Agreement.
2. Transfers. Developer hereby sells, transfers, and conveys the Utility Facilities to the Town and its successors and assigns. Developer represents and warrants to the Town that: (i) it has the right, power, and authority to transfer the Utility Facilities to the Town, without obtaining the consent of any third party whose consent has not been obtained and written evidence thereof furnished to the Town; (ii) the Utility Facilities are free of all liens and encumbrances of any nature whatsoever; and (iii) Developer has received all necessary permits and approvals for the Utility Facilities, and such permits and approvals are final and no longer subject to appeal.

3. Easements. To the extent that the Utility Facilities are not located within the Easements dedicated to the Town as required by the Agreement, Developer hereby gives, grants, warrants, and conveys to the Town, its successors and assigns, a permanent easement lying 7 ½ feet along either side of the Utility Facilities (i.e., for a total of 15 feet) to construct, operate, inspect, maintain, and remove mains, ducts, or other related utility structures that are part of the Utility Facilities (“Easement Grant”). The Easement Grant shall include the right of the Town, its employees, agents, and contractors to ingress and egress over the Property to accomplish the purposes set forth herein. Developer further represents and warrants to the Town that it has the right and necessary authorization to enter into this Easement Grant, and that there are no encumbrances, liens, contracts, or options of any kind or character upon the Property which would prevent Developer from granting, warranting, and conveying to the Town this Easement Grant.
4. Further Representations and Warranties. Developer hereby represents and warrants to the Town that the Town hereby has and will have the necessary access to operate, maintain, replace, and/or expand the Utility Facilities. To the extent necessary, Developer agrees to execute whatever documents necessary to ensure that the Town has the requisite access to operate and maintain the Utility Facilities. The certified original cost of the Utility Facilities to be dedicated to the Town under this Bill of Sale is \_\_\_\_\_ (\$\_\_\_\_\_).
5. Binding on Successors and Assigns. The parties agree that the Town’s service touches and concerns the land and the terms of this Bill of Sale shall be binding upon and inure to the benefit of the parties hereto, as well as their successors and assigns.

IN WITNESS WHEREOF, Developer has caused this Bill of Sale to be executed as of the day and year first above written.

\_\_\_\_\_

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF INDIANA            )  
  )SS:  
COUNTY OF \_\_\_\_\_)

Before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, by me known to be the \_\_\_\_\_ of \_\_\_\_\_, who acknowledged the execution of the foregoing "Bill of Sale and Easement Dedication" on behalf of said entity.

WITNESS my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

\_\_\_\_\_  
(Printed Signature)

My County of Residence:  
\_\_\_\_\_

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. \_\_\_\_\_

This instrument prepared by and after recording return to Stephen C. Unger, Bose McKinney & Evans LLP, 111 Monument Circle, Suite 2700, Indianapolis, Indiana 46204.



**Exhibit D**  
**Form of Easement**

## GRANT OF PERMANENT EASEMENT

This indenture witnesseth that \_\_\_\_\_, hereinafter called "Grantor(s)" for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant, sell and convey to **THE TOWN OF WHITESTOWN, INDIANA and/or WHITESTOWN MUNICIPAL UTILITIES**, whose address is Whitestown Municipal Complex, 6210 Veterans Drive, Whitestown, IN 46075 and its successors and assigns, (hereinafter called "Grantee") a permanent easement and right-of-way to place, construct, operate, control, maintain, reconstruct, relocate, change the size of, repair and/or remove sewer and/or water mains, pipes and conduits, and all associated grinder pumps, valves, pumps, fittings, meters, hydrants, and accessories, and all other necessary, incidental, auxiliary, or related facilities and structures convenient or proper for the purpose of rendering utility services (the "Facilities") along, under, over, through and across a strip of land more particularly described as follows:

See legal description and drawing attached hereto as Exhibit A and incorporated herein by reference.

("Real Estate"), together with the rights of Grantee, its successors and assigns, to: (1) enter into and upon the Real Estate described above with men, machinery, vehicles, and materials at any and all times for the purpose of maintaining, repairing, renewing, or adding to the aforesaid Facilities; (ii) remove trees, brushes, undergrowth, and other obstructions interfering with the activities authorized herein; and (iii) for doing anything necessary, useful, or convenient for the enjoyment of the easement herein granted, including ingress and egress across the subservient real estate. The Grantee shall also have from time to time a temporary construction easement in, under, across, and over the Grantee's adjacent property ten (10) feet on each side of the above-described permanent easement for any and all activities necessary, incidental, or related to the installation and/or reconstruction of the aforesaid Facilities.

Grantor(s) shall have the right to fully use and enjoy the Real Estate except for such use as may impair, impede, obstruct, or interfere with the exercise by Grantee of the rights granted herein. Grantee covenants that, in the installation, maintenance, or operation of such Facilities, under, upon, over, and across said Real Estate, it will restore the area disturbed by its work to a condition that is as near the condition that existed at the time that the portion was disturbed by it as is commercially reasonable. The grants, covenants and stipulations herein provided shall extend to and be binding upon the respective heirs, successors, and assigns of the parties.

The undersigned executing this Easement on behalf of Grantor(s) represent and certify that Grantor(s) is/are the owner(s) of the Real Estate, that the undersigned is duly authorized and fully empowered to execute and deliver

this easement, that Grantor(s) has/have full legal capacity to convey the easement described herein, and that all necessary action for the making of such conveyance by Grantor(s) has been taken and done.

The deed reference required by I.C. § 32-5-2-2 for the Real Estate burdened by the easement herein granted is recorded in the office of the Recorder of Boone County, Indiana, as Instrument No. \_\_\_\_\_

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by "Grantor(s)".

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

STATE OF INDIANA                    )  
  ) SS:  
COUNTY OF \_\_\_\_\_)

Before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ who acknowledged the execution of the foregoing Grant of Permanent Easement, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

Resident of \_\_\_\_\_ County  
My Commission expires: \_\_\_\_\_

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. \_\_\_\_\_ (Declarant)

Form of instrument prepared by Stephen C. Unger, Bose McKinney & Evans LLP, 111 Monument Circle, Suite 2700, Indianapolis, IN 46204